

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: AL&E Committee Analyst: LuAnna Hass Bill Number: AB 2988
Related Bills: See Legislative History Telephone: 845-7478 Introduced Date: March 4, 2002
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Collection of Delinquent Assessments For Industrial Relations

SUMMARY

This bill would require the Franchise Tax Board (FTB) to collect certain employer assessments and penalties for the Department of Industrial Relations (DIR).

PURPOSE OF THE BILL

The author's office has indicated that the purpose of this bill is to give FTB clear statutory authority to collect on assessments referred by the DIR.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2003.

POSITION

Pending.

Summary of Suggested Amendments

Amendments 1 and 2 would address the department's implementation and technical considerations.

PROGRAM BACKGROUND

In 1995, the Legislature passed SB 996 (Lockyer, Stats. 1995, Ch. 33), which added provisions to the Labor Code and the Revenue and Taxation Code (R&TC) to create a pilot program requiring FTB to collect certain employer assessments and penalties for DIR. The pilot program under both statutes was scheduled to sunset January 1, 1999, unless future legislation extended the sunset date.

As stated below in "Legislative History," AB 1957 (Knox, Stats. 1998, Ch. 814) and AB 1655 (Hertzberg, Stats. 1999, Ch. 469) extended and removed, respectively, the sunset date from the Labor Code section that allowed DIR to refer delinquent assessments to FTB. No similar legislation addressed the sunset date for the R&TC section that gave FTB the clear statutory authority to collect on those delinquent assessments. Consequently, the R&TC section was repealed by its own terms effective January 1, 1999. However, under the authority of the Labor Code, DIR has continued to refer delinquent assessments to FTB for collection and FTB has continued to collect those delinquent assessments.

Board Position:

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_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald H. Goldberg

04/12/02

ANALYSIS

FEDERAL/STATE LAW

State law authorizes FTB to administer several non-tax programs, including, but not limited to, child support collections and delinquent fees, wages, penalties, and costs that are referred by DIR. In addition to administering these delinquent accounts referred by DIR, the Labor Code outlines provisions for DIR to levy and collect assessments from employers to fund the Cal-OSHA Targeted Inspection and Consultation Fund. These delinquent assessments also are required to be referred to FTB for collection.

To collect on non-tax debts, the department is authorized to use the remedies and information sources available for collecting personal income tax debts. In addition, the department may use any source and remedy available to the agency referring the debt for collection. In the event a debtor has more than one debt being collected by FTB and the amount being collected is insufficient to cover all the debts, state law requires the amounts collected to be offset against the debtor's debts in the following order:

- child support
- income and corporation taxes
- wages due under the Labor Code
- vehicle licensing fees
- court-ordered debts
- assessments and penalties due under the Labor Code (see "Program Background" above)
- student loans

THIS BILL

This bill would:

- Require DIR to enter into an agreement with FTB for collection of unpaid DIR employer assessments and penalties.
- Provide that interest would not accrue on the delinquencies that are referred for collection.
- Require collections to be deposited in the Cal-OSHA Targeted Inspection and Consultation Fund, which is a special account in the State Treasury.
- Provide that if a debtor notifies FTB of a disagreement over the amount owed, depending upon the particular situation, FTB may:
 - refer the debtor to the referring agency,
 - return the account to the referring agency, and/or
 - rescind the collection action until the matter is resolved.
- Require FTB to provide DIR with activity reports, at least quarterly, that would identify:
 - the total amount referred for collection,
 - the amount collected per employer, and
 - FTB's actual costs of collection.
- Provide that upon appropriation by the Legislature, FTB would be reimbursed for its actual costs from the Cal-OSHA Targeted Inspection and Consultation Fund.

IMPLEMENTATION CONSIDERATIONS

The department uses an automated tax collection system to send notices of delinquency to taxpayers and to garnish wages and levy bank accounts. This automated system searches through more than 220 million income records (including wage, dividend, and interest information) to locate and issue levies to seize an individual's assets. FTB is not required under state law to obtain judicial authorization prior to taking enforcement action or issuing warrants to seize and sell (levy) the taxpayer's assets for satisfaction of any tax debt. This bill does not provide FTB the authority to collect DIR assessments as if they were tax debts. Therefore, the department would be required to obtain judicial authorization on each delinquent assessment referred by DIR, prior to taking any collection action. Amendment 1 is provided to allow FTB to collect DIR delinquent assessments as if they were tax debts.

LEGISLATIVE HISTORY

SB 996 (Lockyer, Stats. 1995, Ch. 33) added provisions to the Labor Code and the R&TC to create a pilot program requiring FTB to collect certain employer assessments and penalties for DIR. The pilot program under both statutes was scheduled to sunset January 1, 1999.

AB 1957 (Knox, Stats. 1998, Ch. 814) extended the sunset date of the Labor Code section to January 1, 2000.

AB 1655 (Hertzberg, Stats. 1999, Ch. 469) removed the sunset date of the Labor Code section.

OTHER STATES' INFORMATION

Since this bill would give the department clear statutory authority to collect on delinquent assessments from DIR, a review of the debt collection practices of other states' OSHA programs does not offer a meaningful comparison.

FISCAL IMPACT

Since DIR has continued to refer delinquent assessments to FTB for collection and FTB is currently collecting on those delinquent assessments, this bill would not significantly impact the department's costs. The department currently receives reimbursement for administrative costs through contracts negotiated with DIR.

ECONOMIC IMPACT

Collection Estimate

Annual collections of delinquent assessments are estimated to be on the order of one million dollars.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

Revenue Discussion

The collection impact of this proposal will depend on the number of delinquent DIR cases referred to FTB for collections and the average amount of collections for each case. The estimate above is based on the results of FTB's existing Industrial Health & Safety collection program.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2988
As Introduced March 4, 2002

AMENDMENT 1

On page 5, line 15, after "(1)" insert:

Except as otherwise provided by this section, the provisions of Section 19290 of the Revenue and Taxation Code shall apply to assessments and penalties that are referred to the Franchise Tax Board for collection pursuant to this section. These assessments and penalties shall be deemed for this purpose to be delinquent debts.

(2)

AMENDMENT 2

On page 5, line 25, strikeout "(2)" and insert:

(3)

AMENDMENT 3

On page 5, line 31, strikeout "(3)" and insert:

(4)

AMENDMENT 4

On page 5, after line 35, insert:

SEC. 2. The provisions of Section 1 of this act are consistent with revisions made to this section by Chapter 814 of the Statutes of 1998 and Chapter 469 of the Statutes of 1999 that provided continued authority for referral of delinquencies to the Franchise Tax Board on and after January 1, 1999. Consistent with those acts, the provisions of Section 1 shall be operative as of January 1, 1999.